

Statement of

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On

Policies for Managing the “Back End” of the Nuclear Energy Fuel Cycle
and
Local Government Role in Decision-Making

Before the

Blue Ribbon Commission on America’s Nuclear Future

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Introduction

Chairmen Hamilton and Scowcroft, and distinguished members of the Blue Ribbon Commission on America's Nuclear Future (Commission), thank you for providing the Energy Communities Alliance (ECA) with the opportunity to present our views on policies related to managing the back end of the nuclear fuel cycle. Founded in 1992, ECA is the national, non-profit organization of local governments adjacent to and impacted by Department of Energy (DOE) nuclear activities. Our members include most of the communities adjacent to DOE and National Nuclear Security Administration (NNSA) sites that currently produce or formerly produced defense nuclear waste, sites that store and process defense nuclear waste, sites that may accept a reprocessing/recycling mission and the sites that are current and potential recipients of defense high-level and other nuclear wastes.

ECA communities have been home to Federally owned and operated nuclear facilities for over half a century. ECA members have decades of experience working on nuclear issues and working with the DOE, Congress and state and federal regulators on large missions that are critical to our country's defense and energy security. ECA believes that any Commission recommendation must suggest that DOE (once again begin to) engage and take into account the impact on the states, tribes and local governments that currently host DOE sites with high-level defense waste.

ECA supports the Blue Ribbon Commission's mission. We believe the Commission can and should develop a comprehensive plan to address existing fuel cycle technologies and options for the management, storage and disposal of nuclear waste. We believe that the long term viability of your recommendations and future federal policy actions hinge, in part, on carefully considering these impacts at the local level.

Defense Waste and Spent Nuclear Fuel Differ

Defense high-level waste differs from private spent nuclear fuel in many ways. First, unlike spent nuclear fuel, defense high-level waste and storage of defense high-level waste is not regulated by a third party (the Nuclear Regulatory Commission regulates private spent nuclear fuel). Defense high-level radioactive waste is self-regulated by the DOE.¹ Neither the U.S. Environmental Protection Agency nor the state regulators have authority over these wastes. Second, defense high-level waste was created primarily to support the defense of our country and not for private energy production. Third, defense high-level waste, in some cases has been shipped from one defense site to another for "temporary" storage pursuant to agreements with states. Fourth, defense high-level waste is being treated to address United States international treaty obligations in some cases. Finally, much of the defense high-level waste is being vitrified and cannot be retrieved for recycling or reprocessing. It is currently being "packaged" to Yucca Mountain standards and stored in "temporary" buildings.

¹ The Defense Nuclear Facility Safety Board provides DOE with recommendations on oversight issues. The Secretary of Energy may reject any recommendation of the Board. See 42 U.S.C. § 2286 et seq., as amended.

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ECA communities currently storing high-level nuclear waste were never intended to become permanent defense waste storage sites. Regardless of the findings of the Commission these same communities have operated on the premise that the defense waste would ultimately be disposed in a geologic repository.

Because ECA communities host DOE sites where this defense high-level waste has been produced and stored, our communities have unique health and safety concerns and needs. Some of this waste which has already been vitrified must eventually go to a repository. There is currently no technology that will allow vitrified waste to be reprocessed.

Local Communities Need to be Involved in the Decision-Making

All of the current primary options for consideration – interim storage, enhanced fuel utilization technologies, reprocessing/recycling, single or multiple permanent geologic disposal sites will impact local governments. Therefore, local governments have a critical role in the process and any project will ultimately need support from local communities at both sender and receiver sites. We ask that local government elected officials be asked to participate in oral interviews with the staff and subcommittees at any site that is being visited as you explore these issues at your site visits.

All levels of Government Must be Considered – including Local Governments

At the first Commission meeting there was some discussion that suggested that local governments are more supportive of Yucca Mountain and this type of project because they stand to gain more from the economic opportunities associated with the project. We do believe that local governments generally tend to take a more constructive approach and while economics certainly is an important consideration, we believe this is an oversimplification that could lead to false conclusions by the Commission. It is crucial that the Commission carefully examine and understand the different political dynamics at the local level versus the state level.

One or More Deep Geologic Repositories Are Needed

The lesson learned over the past twenty plus years is that although the majority of communities where high level waste is stored around the country support or do not oppose a central deep geologic repository -- without support from all levels of government, a project involving the back end of the fuel cycle is unlikely to proceed. The federal government, at the outset should work to try to gain the support of all levels of government through education, outreach and financial support. However, it took special legislative action to designate Yucca Mountain as the nation's geologic repository for SNF and defense HLW and we believe that legislative action will be required to implement the Commission's recommendations.

A Repository Must be Supported at all levels of Government

Although it took the WIPP facility near Carlsbad, NM in Eddy County, NM years to open, the local governments supported and promoted the project, the New Mexico Congressional delegation's leadership supported and advocated for the site, and the state generally supported the site.

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Resources Ensure Local Governments and other Parties Can Participate in the Process

As Senator Domenici highlighted at the last Commission meeting, if you speak with many of the City leadership in Carlsbad, NM, they will know more than many scientists about the issues at WIPP. Part of the Nuclear Waste Policy Act provides funding for affected units of local government for education and technical expertise and the Commission's recommendation should support such funding. It allows a community to bring in experts that it trusts and whose responsibilities are to that community (rather than to DOE, NRC or private industry). The community can be reassured that there are reliable experts looking out for its interests. At several DOE sites, the technical expertise has facilitated community understanding and support. In addition, DOE has benefited from having a community able to clearly discuss issues and concerns with regulators and assist parties to compromise on issues.

Funding must also be provided for outreach programs, to educate stakeholders, government officials, students, and employees and individuals involved with law enforcement, fire fighters, emergency response, medical service, and all other state, county, city and town agencies. This funding will ensure that local communities are informed about health and safety issues, it will assist to alleviate other fears related to the proposed project, and provide awareness of any proposed benefits.

ECA developed a list of recommendations (Attachment A) about engaging the local community to facilitate success of any of the final project decisions. The recommendations underscore the need for clear laws to be developed and federal agencies and companies that may operate any site to:

- Collaborate with and engage the community (not just undertake a community involvement process),
- Financially support technical experts that work for the community,
- Develop clear milestones and goals for the projects,
- Consider community issues and concerns,
- Provide economic incentives to the community,
- Ensure senior decision-makers are based in the community, and
- Provide educational opportunities for communities on health and safety issues related to defense high-level waste.

Support for any nuclear waste program implemented by DOE or a private company can only be gained through engagement and education of the community and incorporating lessons learned from similar projects around the country.

Developing a Final Nuclear Waste Plan

The processes recommended for waste disposition must include disposal of defense high-level waste, used fuel, Greater Than Class C (GTCC) and Low Level Waste (LLW) that will be generated during waste handling and disposal operations. Total costs of disposal must be considered. Segmenting temporary storage, disposal and transportation decisions from ultimate waste disposition decisions will most likely result in less than optimum decisions regarding

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management of the nuclear fuel cycle. No community should be forced to take the burden of disposal without requisite benefits, some of which could be associated with recycling or transportation and storage infrastructure.

A Repository Is Needed

Regardless of whatever programmatic decisions are made, the ultimate need for a repository to dispose of high-level radioactive waste does not go away. Scattering the location of fuel cycle facilities around the country will not optimize environmental, safety, and cost benefits. There are positive synergies associated with co-locating facilities in close proximity to where the waste streams are ultimately destined. Recycling of used fuel should be maintained as an option by utilizing long term storage and/or ensuring retrievability from a repository

Yucca Mountain Must Be Considered by the Commission

Further, the Blue Ribbon Commission must consider the use of Yucca Mountain in its deliberations. Many lessons have been learned by the technical and political actions related to various Yucca Mountain decisions over the years. Further, too much of the defense facility cleanup activities and sunk funds are dependent upon the site to abandon it is an option to be considered. Over the years, communities have been told by DOE that Yucca Mountain is the *only* safe option. Now communities are told that Yucca Mountain is “unworkable.” DOE will not consider Yucca Mountain and will not engage in a discussion with communities or explain why or what will be done at sites that have prepared waste for disposal in Yucca Mountain, are storing and are currently processing the waste while the Blue Ribbon Commission develops recommendations. Communities at defense sites are concerned that if the chosen process is similar to that under which Yucca Mountain was selected, no action will be taken to address the waste that is being “temporarily” stored at defense sites.

Uncertainty about where waste will end up impacts health and safety decisions at defense sites. The Commission needs to provide a final answer. In fact, several communities believe that their economies will be negatively impacted unless a clear decision is made on the disposal of the waste.

The Hanford Site had 2100 metric tons of spent nuclear fuel left in the storage basins of the K-East and K-West Reactors when processing activities were stopped in 1990. DOE took on the challenging task of drying the fuel in multi-canister over packs designed to meet Yucca Mountain acceptance criteria. That fuel now sits in a specially designed storage building waiting for shipment to a deep geologic repository. Due to national security requirements, tens of millions of dollars are spent guarding the building each year with no end in sight. If a different repository is built with different acceptance criteria, the fuel may have to be reprocessed/repackaged at great expense to taxpayers.

DOE is now constructing a waste treatment plant at Hanford that will vitrify (turn into glass) 54 million gallons of highly radioactive liquid waste left in 177 underground tanks. The \$12 billion facility is being designed to produce two waste products. The low activity waste will be separated, vitrified and poured into stainless steel canisters that will be buried at Hanford. The high activity waste will be vitrified in a manner that meets the Yucca Mountain acceptance

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criteria. It will also be poured into stainless steel canisters. Until we have a repository, the high activity waste canisters cannot be shipped, and they will accumulate over the years. Hanford will be forced to build facilities to store them again -- a considerable additional cost to taxpayers.

Recycling/Reprocessing Must Be Explored

Another option is to close the fuel cycle and undertake reprocessing/recycling to decrease the amount of waste that will likely go to an ultimate geologic repository. ECA has held several meetings with DOE since 2007 on recycling and some of our members volunteered for DOE to undertake studies to facilitate the feasibility of locating such facilities in our communities. From the meetings, it is clear that most ECA communities support reprocessing and recycling, especially given their potential to create a more efficient fuel cycle, to ease the waste burden, to use spent nuclear fuel as an energy source, to develop proliferation-resistant technology, and even to increase the viability of a long-term repository. Policies that support recycling used fuel need to be part of the discussion regarding nuclear energy and nuclear needs to be part of the future energy mix in the U.S. Additional details are set forth in Attachment B.

Conclusion

Finally, as the Commission proceeds, we ask that you continue to involve communities and local governments in the Commission's deliberations and decision making process. Every decision made by the Commission will affect communities in sender, receiver, storage, and waste producing sites and will likely have a large impact on our communities' health, safety and economy.

To be successful the ultimate projects recommended by the Commission need local government engagement and support. Most of DOE's successes over the past decade related to nuclear and other waste include a role for the local government in facilitating and then supporting a final decision.

Ultimately, a decision needs to be made by the federal government on closing the fuel cycle and developing a plan for disposal of each kind of nuclear waste. Not making a decision or indefinitely delaying a decision will have a negative impact on the country and local communities. Once a decision is made based on technical feasibility and political considerations, it should be carried out to completion. This will allow our country to move forward.

ATTACHMENT A

RECOMMENDATIONS FOR THE BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE TO INVOLVE LOCAL COMMUNITIES

Community engagement is critical at all steps in the process — beginning with the development of the vision, refining the goals and priorities, and at all times where conflicts arise. An overriding principle is not divorcing process (such as holding meetings) from substance (engaging in a discussion of technical and political issues). For the federal government, the question of community involvement is whether more members of the public accept and support the process. For local governments and other community members, the question is whether they obtain what they want at the site. For both, the question is prioritization — as not all issues are equally weighted. When process gets in the way of discussion a tension will arise. Hence, the parties must continue to understand that the process must lead to consultation, coordination and communication.

The Commission should recommend that any policy development regarding the back-end of the nuclear fuel cycle should include the following:

Recommendation #1: Collaboration -- The Federal government must be required to collaborate (and not merely hold public meetings) with local governments, community members, state and federal agencies, when developing storage or recycling options.

Recommendation #2: The law must be clear — The law defines the process and the opportunity to engage and participate in the process.

Recommendation #3: Identify Goals -- Congress and DOE must identify clear milestones, which must be communicated to and understood by all parties. Clear milestones also permit Congress to annually fund the project.

1. Establishing expectations among the parties;
2. Providing a vision for Congress to fund; and
3. Focusing the parties on the scope of work necessary to accomplish the mission.

Recommendation #4: Education Is Essential — The parties must take the time to educate each other on the technical and policy issues underlying the project and to commit staff resources. Discussions that need to take place throughout the process must also include the question of technical risk and perceptions of risk, recognizing perceptions of risks posed do not always align with the technical risk.

- Hold regular technical meetings;
- Provide pre-decisional drafts of documents to the community;
- Provide local governments and other members of the community with broad access to federal site personnel;

- Hold regular meetings between the federal facilities manager and community members; and
- Educate new parties as they become involved.

Education by each party involved in the project of other parties must occur regularly. The community must not only be educated by federal and state agencies and contractors, but the community must educate federal and state agencies and contractors so that they understand the goals and needs of the community and the history of the community.

Decisions, even technical ones, are influenced by several factors (including risk) and are not solely technically based. For that reason, the federal government and the regulators also must be educated about the perceptions among local governments and others within the neighboring community regarding risk (which generally vary from community to community and even within communities), because such perceptions may not be consistent with technical risks.

Recommendation #5: Resources Ensure Parties Can Participate — The federal government and Congress must provide local communities with the financial resources necessary to organize and retain the staffing resources they need.

Without federal funding, local governments and community organizations will struggle to secure the funds necessary to actively engage on site issues. Without the means to partner effectively, the project will not succeed or be understood – and likely will not be supported by a community. The funds are used for education and to hire technical experts that work for the local community – not DOE, the contractor, the private company or the regulators – so the technical information is actually confirmed and conveyed by a third party technical expert and community issues are addressed.

Recommendation #6: Understand Community Values — To properly collaborate, the parties must work to understand the values of the community, and must work to incorporate such values into the planning process.

Recommendation #7: Economic Incentives Must Be Included in Law -- The economic incentives to any community or communities accepting the mission of serving as a high-level nuclear waste repository of any type must be clearly identified in legislation.

Recommendation #8: Local Presence Facilitates the Project — The federal entity charged with implementing the project must have a local presence and must address problems resulting from staff turnover that negatively affect long-term projects and public involvement efforts. The proximity of decision makers to the site and the neighboring community is vital to ensuring a healthy dialogue in order to gain and keep trust. DOE should not rely on its contractors for this role.

Recommendation #9: The Parties Must Build a Working Relationship — All parties must take the necessary steps to develop and maintain trust, accountability and openness. The Cold War demanded an umbrella of secrecy over the activities of DOE, resulting in the decision-making framework of “decide, announce and defend.” Partnerships, which are based on trust,

accountability and openness, require a fundamentally different paradigm. DOE largely has moved away from its historic posture, but where the decision-making process is not open – like with the current decision on Yucca Mountain -- community trust will be difficult to maintain.

Trust and accountability flow from the program mission and vision — without an agreement on the goals for the program and a vision for where to go, trust and accountability are difficult to achieve. At current DOE sites, there are various ways DOE and the regulators have built trust and accountability.

Openness can be summarized by the following principles that should be embraced by officials at the local, state and federal levels:

1. Abide by the principle of “no surprises”;
2. Be honest (provide accurate information);
3. Provide regular information and brief your counterparts;
4. Identify, for all parties, any real or potential impediments to success;
5. Be available, which could mean talking with or meeting with your counterparts in the local community on a daily or weekly basis;
6. Share bad news in a timely manner;
7. Work off-line, as not all discussions should take place in public;
8. Respect the parties enough to say when you do not agree; and
9. Search for ways to increase dialogue and openness on an ongoing basis.

ATTACHMENT B

ADVANCED NUCLEAR TECHNOLOGIES ARE BEING DEVELOPED TO CLOSE THE FUEL CYCLE

The U.S. nuclear industry currently employs an open fuel cycle. In an open fuel cycle, nuclear fuel is used once in a power plant before the SNF is stored for eventual disposal in a geologic repository. ECA supports closing the fuel cycle, which allows SNF to be reprocessed – or recycled – and begins to address two problems long associated with nuclear power: the sustainability of nuclear waste management strategies and the risk of proliferation.

In 1977, the reprocessing of civilian spent nuclear fuel in the United States was suspended due to proliferation concerns related to the separation of plutonium. Without federal financial support, and given an uncertain future, private investment in the nuclear fuel cycle ceased in the U.S. However, other countries, including France, Japan, Russia, and the United Kingdom, continued to develop policies to reprocess spent nuclear fuel.

While recycling spent nuclear fuel will not eliminate the need for a geologic repository, it can address the waste burden by potentially reducing the volume, thermal output, and/or radiotoxicity of waste requiring geologic disposal. The advanced reactors under development will potentially destroy the longest-lived radioactive components of the fuel, leaving relatively short-lived radioactive isotopes for permanent disposal. That, in turn, may make it easier to site a permanent repository in the future.²

Reprocessing can also take materials that would have been permanently disposed and recycle them as new reactor fuel. When fuel is removed from a nuclear reactor, approximately 95 percent of it is uranium and one percent is plutonium, both of which can be recycled. Advanced technologies for recycling nuclear fuel could reuse as much as 90 percent of the energy in a fuel rod.³ In addition, closing the fuel cycle could reduce the requirement for new uranium by about 25 percent.⁴

In response to proliferation concerns, DOE has already begun research and development on multiple advanced reprocessing technologies that, unlike the methods safely used in Europe and Japan today, would not create a stream of plutonium pure enough to be used in weapons.

ECA communities have focused on recycling over the past few years as an important option to consider in any nuclear waste management policy for the U.S. In 2007, ECA communities met with DOE to discuss recycling, held a meeting with community and private sector representatives around 11 potential sites being considered for future reprocessing facility development, and surveyed energy communities to better understand their perspectives on the challenges and opportunities surrounding recycling.

² Holt, Mark, *Nuclear Waste Disposal: Alternatives to Yucca Mountain*, Congressional Research Service. 7-5700, R40202, (February 2009), p. 2.

³ U.S. Department of Energy – Office of Nuclear Energy

⁴ U.S. Department of Energy – office of Nuclear Energy

ECA found solid support for a nuclear renaissance and the opportunity for nuclear energy to reduce carbon emissions and provide energy reliability and security. Communities support reprocessing/recycling as a resolution to the question: what do we do with the waste – a resolution that turns what until now has been a waste product into an energy resource.

Communities recognize that recycling technologies are still being developed. However, there was a proposal for flexibility, an opportunity for progressive implementation wherein existing processes are used to initiate a demonstration project, and new recycling technologies are introduced as they are ready.

The main challenge identified was communication. DOE went from working with communities on reprocessing and recycling, to ceasing to communicate as the program lost support. With studies still ongoing, the timeline for implementing a reprocessing policy in the U.S. is uncertain.⁵ However, past experience shows the importance of communicating sustained federal support for researching and developing new, proliferation-resistant, economically viable recycling technologies and nuclear reactors. That demonstration of support is essential to gain and maintain investment and momentum that can help realize the potential benefits of a nuclear renaissance and a reduction of waste to be stored and disposed.

⁵ Holt, p. 17.

ATTACHMENT C

HISTORY OF THE FUEL CYCLE—A COMMUNITY PERSPECTIVE

As the United States prioritizes energy independence and clean energy resources, nuclear energy is enjoying historically high levels of support⁶ and the potential for a “nuclear renaissance” is on the rise. New license applications have been submitted and nuclear advisory commissions are being formed. Policymakers and newspapers nationwide are debating the benefits of nuclear expansion and the challenge presented by nuclear waste.

Now, after years of research, litigation, billions spent, and potentially, the end of the Yucca Mountain project, the question still remains: *how will the U.S. manage nuclear waste?* As before, the federal government’s great challenge is to engender confidence that a long-term disposal plan for high-level waste exists so that new nuclear plants will be planned, licensed and built.

In the beginning, it seemed the 1978 Blue Ribbon Commission understood the need to identify and work with a wide group of stakeholders to build broad political support for a high-level nuclear waste repository. However, it was the political environment that seemed to overtake the process for designating Yucca Mountain, ultimately leading to a more aggressive approach and timeline.

As the 1978 Blue Ribbon Commission recommended, the NWPA of 1982 called for the development of two permanent repositories. It was anticipated that one site would be in the West and a second site would be in the East to keep things geographically balanced. The NWPA of 1982 also required DOE to nominate five sites suitable for characterization in the first round of siting. By January 1, 1985, DOE was to recommend three of these to the President for characterization as candidate sites. The President was then to submit his choice for licensing and construction to Congress by March 31, 1987, and that site was to be ready to receive waste by 1998.⁷

However, as the process to characterize potential sites proceeded more slowly than expected and as cost estimates ballooned, strong resistance was developing in eastern states against siting facilities there. Congressional leaders felt they had to move forward while there was still a possibility for any repository. In 1987, the NWPA was amended to require *only* the characterization of Yucca Mountain.

While the State of Nevada had the ability to object to the President’s approval of the Yucca site, Congress ultimately voted to override the State’s objection by joint resolution.⁸

⁶ In recent years support has usually been in the mid-50 percent range, but a March 2010 Gallup Poll shows that figure now at 62 percent, the highest Gallup has measured since it first posed the question in 1994. Similarly, the number of people that “strongly favor nuclear” is up from 20 percent to now 28 percent. Gallup Environmental Poll, March 2010, <http://www.gallup.com/poll/126827/Support-Nuclear-Power-Climbs-New-High.aspx>

⁷ See: Holt, Mark, *Nuclear Waste Disposal: Alternatives to Yucca Mountain*, Congressional Research Service. 7-5700, R40202, (February 2009), p. 20 and Stewart, Richard B., *U.S. Nuclear Waste Law and Policy: Fixing a Bankrupt System*, N.Y.U. Environmental Law Journal, Volume 17, 794 (2009).

⁸ See S.J. Res. 34, <http://www.yuccamountain.org/archive/s.j.res.34.htm>

Communities and Key Stakeholders must be involved in the Commission Decision Making Process

In his article, *U.S. Nuclear Waste Law and Policy: Fixing a Bankrupt System*, author Richard B. Stewart finds that the “successful development of new storage facilities or repositories will require considerable engagement with states and localities, with the utility and nuclear industry, and with environmental and local non-governmental organizations (NGOs), and a capacity for negotiation with those various stakeholders.”⁹

Congress seemed to recognize this need when the NWPA was amended in 1987. DOE was directed to study only Yucca Mountain and funding was provided for “affected units of local governments” within the vicinity of Yucca Mountain to oversee and participate in the Yucca Mountain Project. By affording these local governments participation rights, Congress sought to increase public confidence in the scientific integrity of the repository program, provide citizens the means to interact with the federal government, and demonstrate a commitment to external oversight.¹⁰

Under the NWPA, nine counties in Nevada and one in California were designated as affected counties as well as the Timbasha Shoshone Tribe. Each is eligible to receive financial assistance for a variety of purposes, including:

- Monitoring DOE activities;
- Assessing impacts of site characterization and repository development;
- Making recommendations to the Secretary of Energy;
- Developing claims for impact mitigation and/or compensation assistance; and
- Keeping county residents informed of project activities and issues.

The NWPA of 1987 also established the Office of the Nuclear Waste Negotiator to identify communities interested in hosting a federal repository or Monitored Retrievable Storage (MRS) facility, and to negotiate with states or private entities over the conditions for siting such a facility. However, the Office of the Nuclear Waste Negotiator never really had the opportunity to perform its role in the selection of the Yucca Mountain site. By 1992, the Secretary of Energy announced that efforts by the Nuclear Waste Negotiator to identify volunteer sites had failed. Statutory authority for the Office of the Nuclear Waste Negotiator expired in 1994 and was not renewed by Congress.¹¹ However, there are examples to consider where communities and other stakeholders were successful engaged.

The Waste Isolation Pilot Plant (WIPP) was developed outside of the NWPA framework since the site does not take HLW or SNF. The town of Carlsbad, New Mexico, expressed interest in hosting a repository. Through legislation, litigation and political pressure, the State of New Mexico and DOE agreed that New Mexico would be part of the decision-making process

⁹ Stewart, 814.

¹⁰ The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit. (Churchill County Nuclear Waste Oversight Program) See: <http://churchillcountynwop.com/aulg.htm>

¹¹ See: <http://www.state.nv.us/nucwaste/yucca/dilemna.htm> and Stewart, 806.

for WIPP; DOE would provide funding for State oversight of WIPP; and federal funding would be allocated to ensure safe transportation of waste to the site. In addition, because some of the transuranic waste to be taken was mixed hazardous radioactive waste, the state got regulatory authority under the Resource Conservation and Recovery Act (RCRA).¹² Furthermore, the community received specific economic benefits for hosting the site.

In 1992, Congress enacted the Waste Isolation Pilot Plan Land Withdrawal Act to authorize operation and establish a regulatory framework for the facility. EPA certified the site in 1998 and re-certified it in 2004. As reported in *USA Today*, over the last ten years WIPP has “quietly accepted more than 7,000 shipments of radioactive material from the nation’s nuclear weapons facilities.”¹³ More specifically, as of March 28, 2010, WIPP has received 8,350 shipments since it opened, disposed of 66,124 cubic meters of waste, and disposed of 129,706 containers underground.¹⁴

It is important to recognize that both the state and local governments were involved in the successful development of WIPP. But failure to engage and ensure communication among stakeholders at all levels – local, state and federal – can lead to political posturing and prevent a project from moving forward.

An example to consider is Private Fuel Storage LLC, a consortium of eight nuclear utilities which partnered with the Skull Valley Band of Goshute Indians in Utah to build a private temporary storage facility for commercial waste. In February 2006, after nine years, the NRC granted a license for the facility. However, the State of Utah, which strongly opposed it, quickly filed a challenge to the NRC license. A few months later, the U.S. Department of Interior (DOI) denied a right of way over federal lands for a railroad to the site halting construction. PFS and the Skull Valley Band of Goshutes contended that the decision was influenced by political pressure from the State. In addition, the Bureau of Indian Affairs (an office of DOI) refused to back the project based on concerns that without anywhere else to go, waste would be stored there permanently. In July 2007, the Skull Valley Band of Goshutes filed a federal lawsuit to overturn the DOI administrative decisions.¹⁵

The DOI also proved to be problematic for the State of California. As the host state for the Southwestern low-level radioactive waste compact, California began developing a disposal facility in 1982. The California Department of Health Services completed an Environmental Impact Statement examining potential sites, selected the Ward Valley site, and granted a license to US Ecology to proceed with development. Because the Ward Valley site is on federally owned land, the land needed to be transferred from the Bureau of Land Management at DOI to California. Regardless of the support of California’s Governor Pete Wilson for the site (albeit with other California lawmakers opposed), DOI would not transfer the land without stipulations. The California Department of Health Services felt DOI over-stepped its authority and the National Academy of Sciences’ recommendations DOI wanted them to meet fell under

¹² Stewart, 792.

¹³ “Our view on nuclear power: Responsibility? Yucca choice squanders \$8B investment.” Editorial. *USA Today* 17 March 2009. <http://blogs.usatoday.com/oped/2009/03/our-view-on-nuc.html>

¹⁴ “WIPP Quick Facts.” TRU TeamWorks, March 29, 2010.

www.wipp.energy.gov/.../TRUTeamWorksArchives/TTW%203-29-10.pdf

¹⁵ Holt, 15.

radiological safety, the responsibility of the states. The California Department of Health Services eventually filed suit against DOI. And while Congress debated the issue, it was ultimately a state bill¹⁶ signed by California Governor Gray Davis in 2002 that prohibited the use of the Ward Valley site as a nuclear waste facility.¹⁷

As the Administration looks to develop its path forward, advisors need to consider past successes and failures such as at WIPP and in Utah or California. They should help develop a framework for communication, work and negotiation with affected units of local and state governments as early in the process as possible.

¹⁶ AB 2214, see: http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_2201-2250/ab_2214_bill_20020912_chaptered.html

¹⁷The American Geological Institute's Update and Hearing Summary on Low-Level Nuclear Waste Disposal (10-23-98). See: <http://www.agiweb.org/legis105/lownuke.html>